IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2008
CORAM :
THE HONOURABLE MR.JUSTICE A. KULASEKARAN
W.P. No. 5831 of 2003
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RAP MFRS Employees Welfare Union
Rep. By General Secretary
Mr. Muthusamy
Plot No.3, Barathi Nagar
Arasanpatti
Hosur 635 109 .. Petitioner

Versus

1. The Deputy Commissioner of Labour
Salem

2. Management of Renowned Autoproducts
Limited
MFRS Ltd.,
Rep. By General Manager
No.122, SIPCOT Industrial Complex
Hosur 635 126

3. A. Ramalingam
Deputy Commissioner of Labour
Madhurai

4. Manojkumar Jha
Vice President
Management of Autoproducts Limited
MFRS Ltd.,
No.122, SIPCOT Industrial Complex
Hosur 635 126 .. Respondents

Petition filed under Article 226 of The Constitution of India for issuance of a Writ of Writ of Certiorari as stated therein.

For Petitioner : Mr. V. Prakash, Sr. Advocate
for Ms. G. Ramapriya
For Respondents : Mr. V.R. Thangavelu
Government Advocate for RR1 & 3
Mr. Habibullah Basha, Sr. Counsel
for M/s. Kochhal and Co.,
for RR2 & 4
ORDER
The petitioner has come forward with this writ petition praying for a Writ of Certiorari calling for the records of the third respondent purportedly in exercise of the power vested in the office of the first

respondent in connection with the arbitration award dated 24.12.2001 in Arbitration Case No.1 of 2000 and quash the same.

2. The petitioner is the workers union of the second respondent factory, which is located in SIPCOT Industrial Complex, Hosur where they are manufacturing automobile shock observers in the name and style of Armstrong. The petitioner and the second respondent management entered into a settlement dated 11.09.2000 under Section 12 (3) of the Industrial Disputes Act, hereinafter referred to as the Act, thereby it was agreed between them that the copy of the enquiry proceedings would be submitted to Mr. Ramalingam, who was the then Deputy Commissioner of Labour, Salem, third respondent herein, for a decision as to an arbitrator with regard to the punishment to be imposed against 14 workmen of the petitioner union, including the petitioner, later he was promoted as Joint Commissioner and transferred to Madurai, who after the said promotion and transfer passed the award dated 24.12.2001 recommending dismissal of the workmen Mr. M. Muthusamy, representing the petitioner herein as General Secretary, Mr. M. Chickannan, Mr. G. Nallappa, Mr. M. Krishnappa and Mr. A. Prakashrao. In and by the said award, punishment of withholding increment for one year was imposed against Mr. S. Kalaivarasan, Mr. A. Mohammed Usuf, Mr. L. Vivekanandan, Mr. L. Govindarajan, Mr. C. Gunasekaran, Mr. K. Amaranarayanan and Mr. G. Anandam. On 14.02.2003, a show cause notice was issued to Mr. Muthusamy. Thereafter, the present writ petition has been filed challenging the award dated 24.12.2001 passed in Arbitration Case No.1 of 2000. When the writ petition was taken up for final disposal by His Lordship K.P. Sivasubramaniam, J, the petitioner attacked the award on the ground that the third respondent has no jurisdiction to deal with the issue from the moment he demitted the office as Deputy Commissioner of Labour, Salem, if at all, the Deputy Commissioner of Labour, Salem who succeeded the third respondent alone is competent to decide the issue; that the agreement for reference to arbitrator was not published in the gazette in terms of Section 10-A(3) of the Act and that the non-publication of the agreement rendered the award null and void; that the third respondent decided the entire issue only based on the records without granting opportunity to the petitioner, which amounts to violation of principles of natural justice. In support of this contention, the petitioner has relied on the decisions reported in (i) (Rohtas Industries Ltd and another vs. Rohtas Industries Staff Union and others) 1976 (I) ILJ 274 (SC): (ii) (Karnal Leather Karamchari Sanghatan vs. Liberty Footwear Company & Others (1999) (II) LLN 507 (SC): (iii)(Ramakrishna Kulwantrai Steels (P) Limited vs. Their Workmen (1971) (I) ILJ 882 (Madras High Court Full Bench) and (iv) (Krishnaveni Transport & Others vs. Special Deputy Commissioner of Labour, Madras and others (1989) II LLJ 245) (Madras High Court Full Bench).

3. The second respondent/management contested the case on the ground that no publication of the arbitration agreement is required under Section 10-A(3) of the Act which is very well enforceable under private arbitration. In support of this contention, the respondents/management relied on the decision of the Division Bench of this Court reported in (Moorco (India) Ltd vs. Government of Tamil Nadu, rep. By its Secretary) (1993) (1) CLR 492.

4. Considering the decisions relied on by the counsel for both sides in support of their respective case, His Lordship K.P. Sivasubramaniam, J felt it was difficult to reconcile the judgments of the Division Bench in Moorco (India) Ltd vs. Government of Tamil Nadu, rep. By its Secretary) (1993) (1) CLR 492 with the specific observation contained in the judgment of two full bench, 1977 (1) LLJ 382 and (Krishnaveni Transport & Others vs. Special Deputy Commissioner of Labour, Madras and others (1989) II LLJ 245) (Madras High Court Full Bench) sought reference on 15.12.2004 to Full Bench to consider the following issue:-

Whether an award under Section 10-A of the Industrial Dispute Act which is rendered invalid due to non-compliance of the requirement under Section 10-A(3) of the Act, could be enforced by one of the parties as an award on private arbitration under the provisions of the Arbitration Act, 1996.

5. The Honourable Full Bench, by its order dated 21.04.2006, held that "In the light of the above discussion, we hold that an award under Section 10-A of the Act, which is rendered invalid due to non-compliance of the requirement under Section 10-A(3) of the I.D. Act, cannot be enforced by the parties as an award in private arbitration under the provisions of Arbitration Act, 1996." Thus, the reference was answered accordingly by the Full Bench and matter came back for the disposal of the writ petition.

6. In this backdrop, the learned senior counsel appearing for the petitioner Mr. V. Prakash submitted that the impugned award is contrary to Section 10-A of the Act; that the third respondent has no jurisdiction to deal with the issue the moment he demitted the office of Deputy Commissioner of Labour, Salem and transferred as Joint Commissioner of Labour and posted at Madurai, if at all, the Deputy Commissioner of Labour, Salem, who succeeded the third respondent alone can decide the issue; that the third respondent has decided the issue of punishment without granting opportunity. There cannot be any arbitration outside the purview of Section 10-A of the Act. Section 12 (3) of the Act can only be linked with Section 10-A of the Act. In support of this contention, the learned senior counsel for the petitioner relied on the below mentioned decisions:-

i) (Rohtas Industries Ltd and another vs. Rohtas Industries Staff Union and others) 1976 (I) LLJ 274 (SC) wherein in Para No.9, it was held thus:-

"9. The short but important issue, which has projected some serious question of law,is as to whether the impugned part of the award has been rightly voided by the High Court. We may as well formulate them but highlight the only major submission that merits close examination, dealing with the rest with terse sufficiency. In logical order, counsel for the appellant urged that (1) (a) an award under S.10A of the Act savours of a private arbitration and is not amenable to correction under Art.226 of the Constitution. (b) Even if there by jurisdiction, a discretionary desistence from its exercise is wise, proper and in consonance with the canons of restraint this Court has set down (2) The award of compensation by the arbitrators suffers from no vice which can be regarded as a recognized ground for the High Court's interference (3) The view of law taken by the High Court on (i) the supposed flaw in the award based on "mixed motives" for the offending strike; (ii) the exclusion of remedies other than under S.26 of the Act and (iii) the implied immunity from all legal proceedings against strikers allegedly arising from S.18 of the Trade Unions Act, 1926 is wrong. A few other incidental arguments have cropped up but the core contentions are what we have itemized above."

ii) (Gujarat Steel Tubes Ltd., vs. Gujarat Steel Tubes Mazdoor Sabha) 1980 (1) LLJ 137 wherein in Para Nos. 73 and 78, it was held thus:-
"73. Once we assume that the jurisdiction of the Arbitrator to enquire into the alleged misconduct was exercised, was there any ground under Art. 226 of the Constitution to demolish that holding? Every wrong order cannot be righted merely because it is wrong. It can be quashed, only if it is vitiated by the fundamental flaws or gross miscarriage of justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure and the like. 78. As a fact the Arbitrator held misconduct proved. He further proved that the circumstances justified dismissal though he decided the order to mean discharge simpliciter. Was misconduct proved against each discharged worker at least before the Arbitrator? If it was, did every worker deserve punitive discharge?"

7. The learned senior counsel Mr. Habibullah Basha appearing for the respondents/management submitted that the petitioner failed to note that a memorandum of settlement under Section 12 (3) of the Act was entered into between the petitioner and the respondents/management, wherein it is mentioned that 14 workmen, against whom domestic enquiry was conducted as per Clause 10 of

terms and conditions of the settlement under Section 12 (3) of the Act, the findings along with the copy of the enquiry proceedings of all workmen be submitted before Mr. Ramalingam, Deputy Commissioner of Labour, Salem for his decision with regard to the punishment, as an arbitrator, accordingly referred to, thus, the settlement between the union and the management empowered the arbitrator to give a finding on the punishment based on enquiry proceedings and the finding of the enquiry officer in respect of the 14 workmen, including the person representing the petitioner; that the petitioner or his union has not filed explanation before the arbitrator despite several adjournments were granted, thereafter, the award was passed on 24.12.2001, which was also duly communicated to the petitioner; that the arbitration referred to above is by the name of Mr. R. Ramalingam, not by designation as Deputy Commissioner of Labour Salem; that when both the parties chosen the arbitration, any order passed by the arbitrator, if at all could be taken under the Arbitration Act and not by way of writ petition; that even the said agreement dated 11.09.2000 is vitiated, the status-quo ante prior to agreement/settlement dated 11.09.2000 should be restored, in such event, the domestic enquiry proceedings and the findings of the enquiry officer are restored and based on the said finding of the enquiry officer, a second show cause notice dated 14.02.2003 for dismissal was issued to the petitioner and he having refused to accept the same, it was affixed in the company notice board on 14.02.2003; that subsequently, on 15.02.2003, the petitioner accepted it, but did not come forward to give a reply prior to 17.02.2003; that thereafter, the management has passed an order of termination on 17.02.2003 and the same was sent by registered post with acknowledgment due as well as by certificate of posting to the residential address of the petitioner, in addition to affixing the same in the company notice board; that the petitioner has not whispered in the writ petition that the arbitration agreement was under Section 10-A of the Act, indeed, the same is only a private arbitration, hence, the publication under Section 10A (3) of the Act not at all required; that without prejudice to the right of management, even the arbitration agreement goes, the status-quo ante comes back, the punishment imposed on the workmen is based on the enquiry report, which are not challenged, moreover, the same cannot be challenged in this writ petition. The learned Senior counsel for the respondents 2 and 4 relied on the decision reported in (Moorco (India) Ltd vs. Government of Tamil Nadu rep. By its Secretary) 1993 (1) CLR 492 wherein in Para No.3, it was stated thus:-

3. The question which arose before the learned single Judge for his consideration was as to whether a writ of mandamus, as asked for, could issue. The well-settled proposition is that the Act, as such, does not countenance and make available its machinery for arbitration outside the purview. When there had been a non-compliance with sub-sec. (3) of Sec.10-A of the Act, it is not possible to characterize the decision rendered by the second respondent as one coming within the purview of the Act. In this context, it is relevant to take note of sub-sec. (4) of Sec. 10-A of the Act also, and it reads as follows:-

The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

Sub-sec. (4)of Sec.10-A of the Act is interlinked with sub-sec. (3) and only on satisfaction of the mandates of sub-sec. (3) of Sec.10-A there could be an investigation into the dispute and making of the award by the arbitrator and then forwarding it to the appropriate Government. Otherwise, the whole progress will remain only in the realm of private arbitration falling outside the Act. Sec. 17 could have reference only to publication of awards coming within the purview of the Act. Viewed from this angle, the learned single Judge was correct in discountenancing the prayer for issuance of a writ of mandamus as asked for. The writ appeal directed against the order of the learned single Judge deserves dismissals and accordingly we dismiss it. No costs.

8. Before going into the various grounds canvassed by both sides and the judgments relied upon, it is absolutely necessary to look into the issue referred to the Hon ble Full Bench and its answer:-

The issue referred to Hon□ble Full Bench

□Whether an award under Section 10-A of the Industrial Disputes Act which is rendered invalid due to non-compliance of the requirement under Section 10-A(3) of the Act, could be enforced by one of the parties as an award on private arbitration under the provisions of the Arbitration Act, 1996.

9. The Hon□ble Full Bench answered the issue as follows:-
□□□it is not disputed by the respondents/management there was no publication of the arbitration agreement as required under Sec. 10A(3) of the I.D. Act. However, it is the claim of the management that though the award may be invalid under the I.D. Act, the award will be enforceable as an award under private arbitration□..□

□□□the arbitration agreement as entered into between the parties is traceable only under Section 10-A of the I.D. Act and the agreement being statutory agreement, passed in pursuance of the provisions of the Act whether it is enforceable or not is to be decided only under the provisions of the I.D. Act. We reiterate that if the award fails to satisfy the requirements under the I.D. Act, then the same becomes invalid and unenforceable. To put it clear that non-publication of the arbitration agreement in terms of Section 10A(3) of the I.D. Act vitiates the award and it cannot be enforced by one of the parties, as an award in private arbitration under the provisions of Arbitration Act, 1996.□

□In the light of the above observation, we hold that an award under Section 10-A of the I.D. Act, which is rendered invalid due to non-compliance of the requirement under Section 10-A(3) of the I.D. Act, cannot be enforced by the parties as an award in private arbitration under the provisions of Arbitration Act, 1996. The reference is answered accordingly□

10. Following the findings of the Hon□ble Full Bench, the arbitration agreement dated 11.09.2000 entered into between the petitioner union and the management is traceable only under Section 10-A of the Act, the third respondent's appointment as arbitrator in his official capacity under the Act, non-compliance of publication of the same in terms of Section 10-A(3) of the Act vitiates the award and it could not be enforced by one of the parties as an award in private arbitration under the Arbitration Act, 1996 and the said findings of the Full Bench reached finality, the award impugned in this writ petition is quashed and the plea of the respondents 2 and 4 in so far as the said issues are concerned is rejected.

11. Mr. Habibullah Basha, learned senior counsel for the respondents 2 and 4 submitted that even the said agreement dated 11.09.2000 is vitiated, the status-quo ante prior to agreement/settlement dated 11.09.2000 should be restored, in such event, the domestic enquiry proceedings and the findings of the enquiry officer are restored and based on the said finding of the enquiry officer, second show cause notice was issued to the workmen and punishment was awarded, admittedly, neither any workmen affected nor the petitioner union has challenged the said domestic proceedings and in any event, it cannot be challenged in this writ petition.

12. The prayer in this writ petition is for quashing of the award dated 24.12.2001, which is granted. It is evident from the records that the punishment of dismissal was awarded to Mr. Muthusamy (which alone is produced before this Court) based on the arbitration award dated 24.12.2001. It is needless to say that once the said award is quashed, all notices and orders, including the said dismissal become invalid and the said issue is decided accordingly.

13. As rightly pointed out by the learned senior counsel for the respondents 2 and 4, after quashing the impugned award, the status-quo ante i.e., prior to agreement/settlement dated 11.09.2000 is restored. If the management is advised to proceed further from that stage, it is open to them to do

so, however as per law.

14. The writ petition is allowed in the above terms. No costs.

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To

The Deputy Commissioner of Labour
Salem